NO. 41

IN THE

Supreme Court of the United States

OCTOBER TERM, 1943

GENERAL GRIEVANCE COMMITTEE OF THE BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN, an unincorporated association,

Petitioner,

vs.

GENERAL COMMITTEE OF ADJUSTMENT OF THE BROTHERHOOD OF LOCOMOTIVE ENGINEERS FOR THE PACIFIC LINES OF SOUTHERN PACIFIC COMPANY, an unincorporated association, and SOUTHERN PACIFIC COMPANY, a corporation,

Respondents.

BRIEF FOR PETITIONER

(On writ of certiorari to the United States Circuit Court of Appeals for the Ninth Circuit.)

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Opinion Below

The opinion of the Circuit Court of Appeals (R. 792) is reported in 132 F(2d) 194. There was no opinion of the District Court, but its findings of fact and conclusions of law are found in the record. (R. 44-57)

Jurisdiction

The decree of the Circuit Court of Appeals was entered on November 18, 1942. (R. 827) A petition

for a rehearing was filed by respondent Engineers (R. 828) and denied on January 22, 1943, with a modification of the opinion. (R. 828-829) The jurisdiction of this Court is invoked under Section 240(a) of the Judicial Code, as amended by the Act of February 13, 1925 (28 U.S.C., Sec. 347).

Statute Involved

The statute involved is the Railway Labor Act (Act of May 20, 1926, as amended by the Act of June 21, 1934 (45 U.S.C., Secs. 151-164), the pertinent parts of which, because of their length, are printed in the appendix to the cross-petition filed herein.

Statement of the Case

The respondent, General Committee of Adjustment of the Brotherhood of Locomotive Engineers for the Pacific Lines of the Southern Pacific Company, hereinafter called "Engineers," filed this suit for a declaratory judgment in the District Court, seeking to have the court declare invalid, as violating the Railway Labor Act, certain provisions of a collective bargaining contract executed by petitioner and respondent railroad, the Southern Pacific Company. (R. 2-13)

The petitioner on this cross-petition, General Grievance Committee of the Brotherhood of Locomotive Firemen and Enginemen, hereinafter called "Firemen," is the recognized collective bargaining representative of all locomotive firemen employed by the respondent railroad. (Finding 4(a), R. 45-46) The cross-petitioner has, and for many years has had, a contract with the company covering hours, wages, and working conditions of the craft of firemen. (Finding 5, R. 46-47) Respondent Engineers is the recognized collective bargaining representative for the craft of locomotive engineers employed by the respondent railroad and now holds the contract governing the hours.

wages, and working conditions of that craft. (Finding 4(a) and 5, R. 45-47)

The Engineers' suit is based on their claim that certain provisions of the Firemen's contract infringe upon the right of the Engineers to contract exclusively for the craft of engineers and that therefore such provisions are invalid under the Railway Labor Act.

The Firemen contended successfully in the District Court that they were authorized, under the Railway Labor Act, to agree with the railroad upon the provisions of their contract challenged by the Engineers. Those provisions were therefore held valid, under the Railway Labor Act, by the District Court. (R. 57)

These challenged provisions of the Firemen's contract covered two subjects: First, the right of the Firemen's organization to represent its members in the adjustment of grievances—whether working as firemen or as engineers; second, the right of the Firemen to impose conditions upon the exercise by engineers of the privilege of being demoted to firing service and displacing firemen when the Railroad finds it necessary to reduce the number of engineers on the engineers' working list.

The Circuit Court of Appeals sustained the District Court in its findings and conclusions, sustaining the right of the Firemen's organization to represent its members in grievance cases whether arising out of their work as firemen or as engineers. Whereupon, the Engineers filed a petition in this Court for a writ of certiorari to review this part of the decision of the Circuit Court of Appeals.

The Circuit Court of Appeals also sustained the right of the Firemen to impose conditions on the exercise of the demotion privilege by engineers, but modified somewhat the exact holding of the District Court as to the construction and validity of the conditions

imposed in the Firemen's contract on the exercise of the demotion privilege. Therefore, the Firemen filed a cross-petition in this Court for a writ of certiorari to review that part of the decision, submitting that the entire judgment of the court should be reviewed.

Since this Court now has before it the entire judgment of the Circuit Court of Appeals, and since the representation issue and the demotion privilege issue arise out of the overlapping interests of firemen and engineers, and the fact that the membership of each craft organization includes members of both crafts, it is necessary at the outset to explain the reason and extent of the overlapping interests of the two organizations.

An engineman begins his employment as a fireman and it is in firing service that he acquires his competence to serve eventually as an engineer. A fireman, in practically all cases, joins the Firemen's Brotherhood and, while serving as a fireman, he is required, on the Southern Pacific as on most railroads, to qualify himself to become an engineer or else he will lose his seniority as a fireman. (R. 244-245) After he has qualified, however, it is usually a long time before he obtains a seniority date as an engineer—that is, when he actually begins to serve as an engineer. But even after he has become a qualified engineer with a seniority date, he keeps his seniority as a fireman, working as an engineer only when traffic permits. The traffic on the Southern Pacific, as on other railroads, varies seasonally and also with economic conditions. (Exh. 6, R. 124, 153) In times of heavy traffic, every man qualified as an engineer may be working as such, whereas during exceptionally light traffic (as, for example, during recent depressions), there have been times when every fireman in service held a seniority date as engineer (Finding 6, R. 47-48), which would

mean that a large number of firemen with years of service would be furloughed and out of actual employment.

As a result of these inevitable and recurrent fluctuations of traffic, it is highly important to the Railroad to provide that when the number of engineers must be reduced, the junior engineers can return to service as firemen, thereby permitting the Railroad to use its most experienced employees and to eliminate from active service only the less experienced firemen. But it is a severe hardship upon all firemen to be bumped down from the top of the seniority list by demoted engineers, whereby all firemen are compelled to take less desirable positions and the junior firemen are deprived entirely of work.

The demotion privilege in favor of engineers did not always exist. (R. 197) The privilege was created on the Southern Pacific by agreement between the Railroad and the Brotherhood of Firemen in 1908. (Exh. 7, R. 637; see also R. 197) The provision for the demotion privilege was written exclusively into the Firemen's agreement down to the year 1927. Prior to that time, however, it had become evident that unless the Firemen placed conditions upon the exercise of the demotion privilege which limited its exercise by engineers, the privilege might be abused and be the cause of grave injustice to firemen. So, when the Chicago Joint Agreement was adopted in 1913 (Exh. 9A, R. 669), it was agreed between the Engineers' and Firemen's organizations, as a condition of the demotion privilege, that reductions in the number of engineers would not be made so long as engineers were averaging a certain mileage per month, and that demoted engineers would be returned to engineer service as soon as it could be shown that engineers could earn the equivalent of a certain mileage per month.

This agreement was in effect, with various revisions (Exh. 9-B and 9-C, R. 684, 701) until 1927, when the agreement was terminated by action of the Engineers. Thus, for many years, with the approval of both Firemen and Engineers, conditions were written into the contracts (first, of the Firemen's organization and later of both organizations) fixing limitations upon the mileage which engineers could operate; thus assuring the employment of a reasonable number of engineers and requiring the return of demoted engineers to engineer service when engineers were able to earn a fixed mileage. These mileage limitations therefore served to protect firemen from being displaced by engineers who might be demoted because senior engineers were making excessive earnings, and insured the return of firemen to their previous jobs when demoted engineers could be returned to engineer service and make reasonable earnings.

It is the contention of the Engineers in the present case that the provisions of the Firemen's contract which have the effect of regulating the mileage to be run by engineers is an interference with the exclusive right of the Engineers' Brotherhood to represent the engineers' craft in collective bargaining and in fixing the terms and conditions of employment of engineers. Concededly, the Engineers' Brotherhood is the duly authorized representative of the engineers' craft on the Southern Pacific Railroad. But it is also a fact that the existing contract between the Engineers and the Railroad specifically provides that when it is necessary to reduce the number of engineers, "those taken off may, if they so elect, displace any firemen their junior on that seniority district under the following conditions:" Then the contract also provides for mileage limitations identical in effect, and almost word-for-word the same as corresponding conditions in the Fire-

men's contract (Exh. 1, R. 435-438; Exh. 2, R. 604, 605).

Therefore, when the present suit was brought, the Engineers were not only exercising and contracting for the demotion privilege, which admittedly they could only exercise with the consent of the Firemen, but they had actually incorporated in their agreement with the railroad substantially the same conditions on the exercise of that privilege as the Firemen had written in their agreement. Obviously, the effort to have the provisions of the Firemen's agreement declared invalid sprang from a desire to continue to exercise the demotion privilege but to have the Engineers themselves fix the conditions upon which they would exercise it.

The District Court found explicitly that all the challenged provisions in the Firemen's agreement were "conditions under which engineers may exercise the privilege of displacing firemen and of continuing such displacement," and were therefore valid. (R. 56) The Circuit Court of Appeals sustained the validity of the provisions of the Firemen's contract as to such conditions. But when the Circuit Court of Appeals considered the interpretative questions incorporated in Article 37 of the Firemen's schedule, the court amended the judgment of the District Court, which had held that these interpretative questions were valid, (R. 57) by adding to the judgment the following paragraph, succeeding Paragraph b(1):

> "(b) (2) The Questions and Answers of Article 37, Section 15, are under the Railway Labor Act valid only in so far as they relate to their rights of firemen as such under said section. They are invalid under said Act in so far as they relate to entry of a fireman into the craft of engineers." (R. 826)

The effect of this amendment by the Circuit Court of Appeals is to create a great confusion as to the right

of Firemen to control the *promotion* of demoted engineers and possibly to deny to the Firemen the right to agree with the Railroad for the promotion of firemen in the order of their seniority. This right to regulate seniority has always been recognized as the fundamental right of any craft and under the construction which *may* be placed upon the ruling of the Circuit Court of Appeals, the Firemen *may* be denied, not only the right to maintain a reasonable condition upon the exercise of the demotion privilege, but even the elementary right to contract as an organization for the regulation of the seniority and promotion of members of their craft. This apparent denial to the representatives of a craft of what has heretofore been recognized as a fundamental right of collective bargaining to be exercised by the duly authorized representatives of a craft, would have far-reaching evil consequences. The rights of the Firemen merit clarification and protection by this Court.

It should be emphasized that there is no issue presented to this Court as to the validity of any part of the Firemen's contract except the questions and answers to Article 37, Section 15. But in order that the entire issue may be properly understood, we quote all the provisions of the Firemen's agreement originally subject to attack by the Engineers in the District Court:

"ARTICLE 43.

"Demotions and Lost Runs.

"Sec. 1. When, from any cause, it becomes necessary to reduce the number of engineers on the engineers' working list on any seniority district, those taken off may, if they so elect, displace any fireman their junior on that seniority district under the following conditions:

"First: That no reduction will be made so long

as those in assigned or extra passenger service are earning the equivalent of 4000 miles per month; in assigned, pooled or chain-gang freight, or other service paying freight rates, are averaging the equivalent of 3200 miles per month; or the road extra list are averaging the equivalent of 2600 miles per month, or those on the extra list in switching service are averaging 26 days per month.

"Second: That when reductions are made they shall be in reverse order of seniority.

"Sec. 2. When hired engineers are laid off on account of reduction in service, they will retain all seniority rights; provided, they return to actual service within 30 days from the date their services are required.

"Sec. 3. Engineers taken off under this rule shall be returned to service as engineers in the order of their seniority as engineers, and as soon as it can be shown that engineers in assigned or extra passenger service can earn the equivalent of 4800 miles per month; in assigned, pooled, chain-gang or other regular service paying freight rates, the equivalent of 3800 miles per month.

"Sec. 4. In the regulation of passenger or other assigned service, sufficient men will be assigned to keep the mileage, or equivalent thereof, within the limitation of 4000 and 4800 miles for passenger and 3200 and 3800 miles for other regular service, as provided herein. If, in any service, additional assignments would reduce earnings below these limits, regulation will be affected by requiring the regular assigned man or men to lay off when the equivalent of 4800 miles in passenger or 3800 miles in other regular service has been reached.

"On road extra lists, sufficient engineers will be maintained to keep the average mileage, or equivalent thereof, between 2600 and 3800 miles per month; provided that, when engineers are cut off the working list and it is shown that those on the extra lists are averaging the equivalent of 3100 miles per month, engineers will be returned to the

extra lists if the addition will not reduce the average mileage, or the equivalent thereof, below 2600 miles per month.

"Where separate extra lists are maintained for yard service, sufficient engineers will be maintained to keep the average earnings between 26 and 35 days per month; provided that when engineers are cut off the yard working list and it is shown that men are averaging the equivalent of 31 days per month, engineers will be returned to service if the addition will not reduce the average earnings below 26 days per month.

"Note: As to mileage regulations affecting part-time men, see addendum to Article 43, pages 118-119-120." (Exh. 2, R. 604-606)

"Sec. 6. In making reductions and replacing firemen upon the service lists, the same mileage shall apply as in the case of engineers." (Exh. 2, R. 608)

"ADDENDUM TO ARTICLE 43; APPLICATION OF MILEAGE REGULATIONS TO PART-TIME MEN.

"Excerpts from letter of November 30, 1934, from Mr. Wm. M. Leiserson, Chairman, National Mediation Board, to Mr. A. Johnston, Grand Chief Engineer, Brotherhood of Locomotive Engineers, Mr. D. B. Robertson, President, Brotherhood of Locomotive Firemen and Enginemen, Mr. J. A. Phillips, President, Order of Railway Conductors, and Mr. A. F. Whitney, President, Brotherhood of Railroad Trainmen, concerning the application of mileage regulations to part-time men, the conditions of which were, before the President's Emergency Board of April-May, 1937, accepted by Mr. G. W. Laughlin, First Assistant Grand Chief Engineer, Brotherhood of Locomotive Engineers, and Mr. C. V. McLaughlin, Vice President, Brotherhood of Locomotive Firemen and Enginemen, and concurred in by the Carrier, as disposing of Case No. 11 that was pending before that Board:

" 'We understand also from your conversation with respect to part-time men, whether

they be engineers and firemen or conductors and trainmen, a sound and practical basis for adjustment would be to permit each organization to regulate the conditions of the part-time man during the time that these men are employed at the occupation covered by such organization. Thus if the mileage limitation on any road was 3300 miles for firemen and 3800 miles for engineers, a man in freight service making 1500 miles as a fireman, then used as emergency engineer for 500 miles, would be permitted to make only 1300 additional miles as a fireman; or a man making 2000 miles as an extra engineer who is cut off the engineer's extra board, would be permitted to make only 1300 additional miles as a fireman. On the other hand, a fireman who has made his maximum mileage of 3300 miles and has been taken off on that account, might be used as an emergency engineer or go on the engineers' extra board for the remainder of the month to make the additional 500 miles up to 3800 in accordance with the engineers' mileage limitation.'

" 'We understood from the discussion also that nothing in such a regulation of the part-time men would prevent any organization from regulating the mileage of its own men by adjustment at the end of each month or checking period, in order to offset any excess mileage that an individual may have made. That is to say, if a trainman had made 400 extra miles as an emergency conductor in any one month or checking period, and if at the end of that month or checking period he was working as a trainman, the trainmen's organization would have the authority to regulate him to bring his mileage within the trainmen's limitation. If, on the other hand, the man was working as a conductor at the end of the month or checking period, he would be subject to the regulation of the conductors' organization.

The point, as we understood it, was that each organization would be free to make adjustment for excess mileage of the men under its jurisdiction to bring them within the mileage limitations set by that organization. And the fact as to whether a man was subject to the jurisdiction of one organization or another would be established by the craft that he was working in at the end of the month or checking period.'" (Exh. 2, R. 629-632)

"QUESTIONS AND ANSWERS TO ARTICLE 37, SECTION 15 [1]

"Question: (a) If it becomes necessary to call a fireman for service as an emergency engineer, when the engineers' extra list is exhausted, who should be called?

"(b) Should a senior demoted engineer holding assignment as fireman become available after man used under (a) returns to terminal or completes day's work, who should be used?

"Answer: (a) The senior available qualified man in accordance with his seniority as engineer.

"(b) The senior available man. (Exh. 2, R. 587)"

Specification of Errors

The Circuit Court of Appeals erred in that part of its decision under heading B: (R. 815-826)

(1) In holding that Article 43, Sections 1, 2, 3, 4, and 6, of the Firemen's contract, and the Addendum to Article 43, did not prescribe rules for the advancement of firemen *into* engine service as a condition of the privi-

[1] Section 15 provides: "A fireman assigned to a regular run and, at the instance of the Company, called for other service, thus causing him to miss his regular run, will be paid for such other service not less than he would have earned had he been sent out in turn in the service to which assigned. This not to include overtime." (Exh. 2, R. 587) The Engineers do not contend that this provision, as distinguished from the questions and answers, is invalid.

lege of engineers to displace firemen, and that the Firemen agreed with this interpretation.[1]

(2) In holding that the Firemen had no jurisdiction to contract with the Railroad as to rules for the advancement of firemen into engineer service where such rules were conditions of the privilege under which engineers could displace firemen, and that the Engineers had an exclusive right to contract on this subject.

(3) In holding that Article 43, Sections 1, 2, 3, 4, and 6, the Addendum to Article 43, and the Questions and Answers of Article 37, Section 15, were in part invalid under the Railway Labor Act.

Summary of Argument

I

The Firemen contend that, as conditions imposed on the demotion privilege granted to the Engineers, the Firemen had a right to contract regarding the regulation of the mileage to be run by engineers and also as to the return of demoted engineers to engineer service. These contractual provisions were all designed to protect the firemen from any abuse of the demotion privilege by Engineers and to maintain the seniority rights of firemen.

II

The Firemen agreed that the provisions of their contract (Article 43, Sections 1, 2, 3, 4, and 6) were to be interpreted as conditions upon the exercise of the demotion privilege, but did not agree, as stated in the opinion of the Circuit Court of Appeals, that "the Railway and the Firemen's Brotherhood agree that they were solely conditions of engineers' entry into and

[1] In view of possible misunderstanding of this specification, repeated from the cross-petition for a writ of certiorari in this case (a misunderstanding made evident in the Solicitor General's brief *amicus curiae* (page 50)), this specification will be clarified and elaborated in the Argument, *infra*.

their employment as firemen, and do not control engineer employment." (R. 822) It should be obvious, first, that these conditions do affect the employment of engineers; and so long as the Engineers utilize and indeed contract for the demotion privilege, the conditions attached to the exercise of that privilege will continue to affect engineer employment.

Furthermore, the Firemen contend that they have a right to contract regarding the promotion of men from firing service, whether demoted engineers or not, first, as a condition upon the exercise of the demotion privilege and, second, to establish and maintain rights of seniority for firemen, a matter within the exclusive bargaining power of the Firemen's Brotherhood.

III

The Circuit Court of Appeals, in holding that the contested provisions of the Firemen's contract were in part invalid, under the Railway Labor Act, enunciated the doctrine that "the cleavage of the powers of the firemen and engineers' crafts to agree with the employer is at the point of imposing conditions of entry into the one craft or the other." (R. 824) The Firemen contend that this is an artificial and impractical line of cleavage, first, because, as a condition of the demotion privilege, the Firemen have the right to require the return of demoted engineers to engineer service in the order of their seniority (which determines demotion); and, second, that in the establishment and maintenance of the seniority rights of firemen, the Firemen's Brotherhood has a right to contract for the promotion of men in firing service to engineer service in accordance with their seniority. The provisions of the Firemen's contract held by the Circuit Court of Appeals to be invalid in so far as they relate to entry of a fireman into the craft of engineers are therefore valid exercises of the rights of the Firemen.

ARGUMENT

I

The contested provisions of the Firemen's contract were valid conditions imposed upon the exercise of the demotion privilege by engineers.

Article 43 of the Firemen's contract begins as follows:

> "ARTICLE 43.
>
> "Demotions and Lost Runs.
>
> "Sec. 1. When, from any cause, it becomes necessary to reduce the number of engineers on the engineers' working list on any seniority district, those taken off may, if they so elect, displace any fireman their junior on that seniority district under the following conditions:" (R. 604)

In strict construction of a carefully drawn legal document, the next two subparagraphs, "First" and "Second," are plainly intended as expressing the described conditions upon the exercise of the demotion privilege. The following sections, 2, 3, and 4, and (omitting Section 5, which provides for the proper computation of a fireman's mileage) Section 6, cover further conditions attached to the exercise of the demotion privilege. The Firemen and the Railway both agree to this interpretation of Sections 2, 3, 4, and 6. They are the sole parties to the contract whose interpretation should be conclusive as to its meaning.

So the Engineers are compelled to treat their objection to these sections as an objection to the imposition of such conditions. They cannot contend that they are independent provisions and, in the brief of respondent on the cross-petition of petitioner in the present case, counsel for the Engineers expressly state that "the

Circuit Court of Appeals did not err in holding that Sections 2, 3, 4, and 6 of Article 43 of the Firemen's agreement shall be limited in their application to conditions under which demoted engineers enter, remain in, and leave the firemen's craft." But counsel for the Engineers continue their interpretation of the ruling of the Circuit Court of Appeals as follows: "* * * "and that said sections are invalid in so far as they seek to prescribe conditions of re-entry into the engineers' craft or to regulate the mileage of engineers or the number of engineers to be assigned to the engineers' working lists." (Brief of respondent on cross-petition, page 3)

Thus it is apparent that the Engineers are attempting to make the artificial line of cleavage laid down in the opinion of the Circuit Court of Appeals into a barrier forbidding the Firemen to maintain in promotion the established seniority rights of men in firing service. But this contention would deny to the firemen the right to impose a condition upon the demotion privilege which is vitally essential to prevent abuses of that privilege.

The Engineers' position, in effect, is this: When the Firemen grant the demotion privilege, they can impose conditions to determine when engineers can displace firemen and the Firemen can, presumably, provide when demoted engineers must cease firing; but the Engineers exclusively can determine when men who are pushed up and out of firing service can resume employment as engineers. Such a doctrine would impose an unwarranted and unreasonable limitation upon the right of the Firemen to impose conditions upon the demotion privilege. It would also authorize the Engineers to control the exercise of seniority rights by a fireman who is either a demoted engineer or is eligible for promotion.

The entire argument of the Engineers is based on a wilful ignoring of the actual conditions of engine service. Where a craft may be regarded as an original craft, into which unskilled men enter through a process of training and possible apprenticeship, it may be proper for the craft union and the employer to contract regarding the conditions under which persons may be employed and may establish seniority rights. Certainly no other craft organization would have a legitimate interest in such questions except, for example, in a case where men may work side-by-side, dependent on each other's skill for the efficiency or safety of their work. In such instance, one craft might have a legitimate interest in agreeing with an employer upon the qualifications and competence of co-workers.

But here we have the situation of an engineers' craft which draws substantially all its employees from the firemen's craft. Even an engineer hired by a railroad for the first time as an engineer will almost certainly have served previously somewhere as a fireman. We have also the situation where firemen on the Southern Pacific and on most railroads are required to take promotional examinations and to qualify for service as an engineer, the penalty for failure being loss of seniority as a fireman. (R. 244-245) We have the further situation that, in the interest of the public service, it is the Railroad's desire to have a reservoir of competent engineers in their demoted engineers who are serving as firemen or in firemen who have qualified for promotion.

Thus it becomes a matter of major and imperative interest to firemen to have a definite arrangement with the Railroad providing for their promotion in order of their seniority.[1] Particularly when the Firemen permit the demotion of engineers to firing service and the displacement of senior firemen, they are deeply concerned

[1] Apparently the Solicitor General agrees that the Firemen have this right. (Brief, p. 39-40)

with the promotion of men *from* firing service in the order of their seniority; and have a right to insist, as a condition of the demotion privilege, that firemen shall be promoted when engineers are running sufficient mileage to provide reasonable employment for demoted engineers.

When the Engineers assert that promotion and a return to engineer service are the *exclusive* concern of the engineers' craft, they deny reality and attempt to establish an artificial and unwarranted authority in the engineers' craft. It seems plain (and is conceded) that the Firemen, as a condition of the demotion privilege, can require that engineers shall only be demoted when there is insufficient work for all of them. It should be equally plain that the Firemen have the right, by a corresponding condition, to require that such demoted engineers shall be promoted back to engineer service when there is sufficient employment for more engineers than are working.

In effect, the Engineers say: "Oh yes, you can promote a demoted engineer but he won't have a job unless we agree to it; and, although *demoted* in order of seniority, we will restore a demoted engineer to engineer service in the order that we determine." It is obvious that the sole purpose of such an unreasonable claim is to give the Engineers' Brotherhood such a control over promotions that they can compel any man having a seniority date as an engineer to join their organization in order to get fair treatment.

This claim of the Engineers puts an artificial limitation on the conditions which the Firemen are justified in imposing on the exercise of the demotion privilege. This limitation is peculiarly indefensible when it is recognized that the establishment of seniority rights for firemen, clearly an exclusive concern of the Firemen's Brotherhood, is thus interfered with and disor-

ganized by action of the craft which has no authority to establish such seniority rights. Where there is no regular promotion out of the service performed by one craft into the service performed by another, the authority of a craft to contract with the employer regarding the seniority rights of its members is not subject to dispute or qualification. But in the present instance, the sole promotion and open highway of promotion is from firing service into engineer service. In these circumstances, the proposition that entry into engineer service is controlled exclusively by the engineers' craft means to impose an effective and unreasonable limitation upon the right of the firemen's craft to establish and maintain the seniority of its members. Such a limitation becomes plainly indefensible when the firemen's craft at the same time is granting to the engineers' craft the privilege of demotion and the privilege of displacing senior firemen.

If the Engineers did not have and did not exercise any demotion privilege, there would still be a question as to whether, when firemen have established seniority rights by a contract with the Railroad, the Engineers could create, by contract with the Railroad, a right to ignore the firemen's seniority and to designate, at the will of the Engineers, what firemen shall be permitted to obtain employment as engineers.

But in the present case, the Firemen are merely contending that, as a condition of the demotion privilege which interferes with the exercise of the seniority rights of firemen, these same firemen shall have preserved for them the substance of their right to promotion in order of seniority—not the shadow of a right to promotion *without a job*, but the substance of the right of promotion *to a job*.

Even the line of cleavage suggested by the Circuit Court of Appeals does not apply properly to the present

situation. The demoted engineer has already "entered" into the engineers' craft. When forces are reduced, he, instead of being taken out of employment, is re-employed as a fireman on the condition expressly laid down by the Firemen that he shall, under more favorable conditions, be re-employed as an engineer—thus permitting a long line of firemen to recover the seniority positions of which they have been temporarily deprived. It would be in the normal interest of the Engineers themselves to provide for the return of a demoted engineer to engineer service in order of seniority. The fact that they wish to control the conditions under which a demoted engineer will be returned to engineer service shows an ulterior purpose which can only be the injury of the interests of the firemen and their organization.

No demoted engineer having a senior firing job will be willing to leave that for *un*employment as a *furloughed* engineer. The Firemen's Brotherhood would not wish to force demoted engineers to such a choice. But the Firemen's Brotherhood must be under pressure from the whole line of reduced firemen to push out of senior firing positions demoted engineers who ought to be employed as engineers in a reasonable distribution of engineer work. Thus, the Firemen's Brotherhood may be forced, in justice to the large majority of its membership, to take away the demotion privilege which is in the broad interest of all concerned—the Railroad, the Engineers, and the Firemen. Thus the Engineers would be able to avoid the dangerous and wrongful action on their part of abandoning the demotion privilege which is of common value to junior engineers, senior firemen, and the Railroad.

The present case presented to the Court an issue of law. It was not the function of the Court to sit as a board of arbitration, determining what contracts the

Firemen or the Engineers and the Railroad should make. The sole question presented was whether the contract with the Firemen was invalid as being contrary to an express requirement of a federal statute. That statute, the Railway Labor Act, provides simply that "the majority of any craft or class of employees shall have the right to determine who shall be the representative of the craft or class for the purposes of this Act." (Sec. 2, Fourth)

It is conceded by all parties in this case that the majority representative of the craft of firemen is the Firemen's Brotherhood, and the majority representative of the engineers' craft is the Engineers' Brotherhood. It is conceded that each Brotherhoods has the right to make a contract with the carrier as the result of collective bargaining to determine the terms and conditions of the employment of its craft. It is the holding of this Court in *Virginian Railway Company v. System Federation No. 40*, 300 U. S. 515, 549, that the Act "imposes the affirmative duty to treat only with the true representative and hence the negative duty to treat with no other." The correctness of that ruling is not disputed. But where there is a subject matter of contract in which the members of *two* crafts are interested, the first question which arises is: Have the craft organizations an overlapping jurisdiction permitting either one, or both, to make a lawful contract with the carrier?; second, if only one contract is legally permissible, which craft organization has the exclusive right to make a contract concerning the subject matter in which *both* are interested?

It was the primary position of the Firemen in this case, and in *General Committee v. M. K. T. R. R. Co.*, now identified in this Court as No. 23, October Term, 1943, that in the matter of the demotion and promotion of engineers and firemen there was an overlapping

jurisdiction, since it could not be denied that both the firemen's craft and the engineers' craft had a legitimate interest in this subject matter. Under these circumstances, the Firemen have contended that the Railroad either (1) could make the same contract with both organizations, the legality of which no one would dispute, or (2) could make a separate contract with that organization with which the Railroad was able to agree, covering the subject matter of common interest, so long as that contract did not infringe upon an exclusive jurisdiction of the other craft.

The Firemen have pointed out that the Engineers certainly could not make a contract to provide that engineers could be demoted to firing service and displace senior firemen from their jobs. But the Firemen have contended that the Firemen could make a contract with the Railroad granting the privilege to demoted engineers to displace firemen upon conditions reasonably related to the demotion privilege, and that if the Engineers contracted for or continued to exercise the demotion privilege, they would be bound by the conditions imposed in the Firemen's contract. In the M.-K.-T. case, the Fifth Circuit sustained the legal soundness of the Firemen's position. The court, in its opinion, described the Firemen's contract as "incomplete" but held it to be valid. It is quite evident the court meant that since the contract affected engineers, a "complete" contractual settlement of this issue would require either a tripartite contract or two contracts to the same effect between the representative Brotherhoods and the Railroad. But the court clearly sustained the right of the Firemen's Brotherhood to contract regarding this subject matter.

In the Southern Pacific case, the Circuit Court followed a similar line of reasoning as to the proper interest of the Firemen's Brotherhood in establishing

reasonable conditions upon the exercise of the demotion privilege. Then the court proceeded to lay down an apparent limitation upon the conditions which the Firemen's Brotherhood might impose, and thereby established a rule limiting craft jurisdiction for which there is neither justification nor authority in the law. The court concededly had no inherent authority to limit the jurisdiction of a craft organization; and the court cited no provision in the Railway Labor Act granting it any such authority. On the contrary, the Railway Labor Act not only establishes the right of *self-organization* of railway employees but also contains an express prohibition against the establishment of a limitation of this right by action of any public authority purporting to rely upon the Act.

Section 1, Paragraph Fifth, of the Railway Labor Act provides a definition of the term "employee" as one—

> "who performs any work defined as that of an employee or subordinate official in the orders of the Interstate Commerce Commission now in effect, and as the same may be amended or interpreted by orders hereafter entered by the Commission pursuant to authority which is hereby conferred upon it to enter orders amending or interpreting such orders. *Provided, however,* That no occupational classification made by order of the Interstate Commerce Commission shall be construed to define the crafts according to which railway employees may be organized by their voluntary action, *nor shall the jurisdiction or powers of such employee organizations be regarded as in any way limited or defined by the provisions of this Act or by the orders of the Commission.*" (Italics ours)

Now it is the contention of the Engineers that the amendments of 1934 establishing the right of the majority of any craft to select the representative of the craft, and requiring the carrier to treat with the certi-

fied representative of a craft (Section 2, Paragraphs Fourth and Ninth), did limit and define the jurisdiction and powers of an employee organization. It is, however, a fact that Section 1 of the Act was rewritten in the amendments of 1934, and the previously-quoted fifth clause was re-enacted. Thus it seems plain that the Congress did not, in establishing majority representation, intend thereby to define the extent of craft jurisdiction.

In a general way, the jurisdiction of the various railroad crafts is fairly well understood and accepted, particularly where the crafts extend beyond the railroad industry, as in the case of machinists, electrical workers, boilermakers, etc. To a certain extent, the jurisdiction of organizations such as engineers, firemen, conductors, trainmen, switchmen and telegraphers, are fairly well defined. But it should be plain that where there is a jurisdictional dispute among such organizations as machinists, electrical workers, boilermakers, or sheet metal workers, there is no provision in the Act giving any administrative or judicial tribunal the authority to decide what work comes within the jurisdiction of a craft organization. Furthermore, in the crafts peculiar to railroad service, there have always been many jurisdictional controversies between, for example, telegraphers, clerks, and dispatchers. Also, there are many cases of overlapping jurisdiction such as the present one between Firemen and Engineers, and similar issues between conductors and trainmen; or between trainmen and switchmen. It is certainly not contended that the Railway Labor Act provides any measures or any authority for limiting or defining the jurisdiction or powers of the employee organizations, which are the duly authorized representatives of an established craft.

It has been necessary for the Mediation Board, in holding an election to determine the lawful representa-

tives of a craft or class, to list those involved in the dispute as entitled to vote; and, for that purpose, as pointed out in the Switchmen's case (before this Court also on certiorari as No. 48, October Term, 1943), it has been necessary for the Mediation Board to exercise its discretion in establishing what has been described as the functional or occupational division of employees into a craft or class—that is, to decide for example what men were engaged in the work of the craft of which a vote was to be taken. But this is the extreme limit of the exercise of any such authority under the Act; and in such a case the Mediation Board only decides as a matter of fact who *are* engaged in work commonly recognized as the work of a craft. But the Board has not been authorized to decide that an organization has no power or jurisdiction to make a contract concerning a subject matter in which the members of the craft represented are very clearly concerned.

We submit that if a court had before it a case in which an organization were seeking to make a contract regarding a subject matter in which the members of its craft had *no* interest, or only a *secondary* interest, the court would be justified in holding that such a contract was invalid if in conflict with an existing contract held by an organization representing the craft which clearly had a direct and immediate interest in the subject matter. But a court would certainly not be justified in holding that an organization has no *right* to make a contract concerning a subject matter in which its membership has a direct and vital interest. The fact that another organization may have an interest in the same subject matter does not authorize the court to choose between the two and to grant a jurisdiction to one and to deny it to the other. This should be peculiarly evident where no question is raised as to conflicting contracts, but where two organizations have two simi-

lar contracts with a railroad, as the Engineers and Firemen have in the present case, and the Engineers are seeking a declaration to the effect that the Firemen's contract is invalid, in order to render the Railroad helpless to make any contract covering the subject matter unless an agreement can be made with the Engineers.

We submit that in a case such as the present, where there is plainly an overlapping interest of two organizations in the subject matter, the court is not authorized to define or to limit the jurisdiction or powers of the contracting organization. We submit that the proper judgment would be that, since the Firemen have made a contract covering a subject matter of direct and vital interest to the members of their organization, that is a valid contract. The Engineers have the right to bargain with the Railroad and, if they should obtain an inconsistent contract, they might in that manner put pressure upon the Railroad to change its agreement with the Firemen.

But, in the present instance, since the Engineers have a contract, and desire evidently to maintain this contract which grants to their members the demotion privilege, they have neither moral nor legal basis for urging the Railroad to abrogate its contract by which the Firemen grant and impose conditions upon the demotion privilege. The Engineers certainly have no basis for their claim that the Railway Labor Act empowers a court to define the limits of the jurisdiction and powers of the Firemen's organization so as to invalidate a part of a contract covering the vital interests of the Firemen in the grant and exercise of the demotion privilege and the consequences thereof.

II

The Circuit Court of Appeals erred in holding that the contested provisions of the Firemen's contract were "solely conditions of engineers' entry and their employment as firemen and do not control engineer employment." The court was mistaken in its statement that "the Railway and the Firemen's Brotherhood agree" with this construction of the Firemen's contract.

It is true that the Railway and the Firemen's Brotherhood agreed that the contested provisions of the Firemen's contract were all to be interpreted as conditions imposed upon the exercise of the demotion privilege by engineers. But it would be contrary to fact to assert that these provisions did not to some extent affect, and therefore in part "control," engineer employment. This is a vital point because the language of the opinion and the judgment of the Circuit Court of Appeals have been construed by the Engineers, with some plausibility, to mean that the Firemen can only lay down conditions as to when engineers may enter and must leave firing service; and that the Firemen cannot lay down the further condition that when demoted engineers are required to leave firing service, they must be employed as engineers in the order of their seniority.

In behalf of the Firemen, it is submitted that the grant of the demotion privilege can properly be conditioned upon both the requirement that engineers shall not be demoted except when they are earning *insufficient* mileage and the condition that demoted engineers shall be restored to active employment as engineers whenever engineers are earning *sufficient* mileage. If the Engineers do not wish their employment to be "controlled" to this extent, they can eliminate any

such "control" of their employment by abandoning the exercise of the demotion privilege. But when the Engineers as a craft contract for the exercise of the demotion privilege, and all engineers are free to exercise it, they must, as a craft, accept all conditions reasonably imposed upon, and related to, that privilege by the Firemen.

As heretofore pointed out, unless the flow of engineers down and firemen up is determined by fixed rules which protect fully the interests of the Firemen in continuing employment and assured promotion, the majority of the Firemen would be so injured by the exercise of the demotion privilege that they could no longer afford to grant it, even for the benefit of a minority of Firemen who, because of part-time service as engineers, are interested in maintaining this privilege. Indeed this minority of Firemen would find the demotion privilege of doubtful value if, after being demoted, they did not have assurance of being restored to engineer service in the order of their seniority when compelled to leave firing service.

In addition to this interest of the Firemen's Brotherhood in requiring the promotion and restoration to engineer service of demoted engineers, as a condition of the demotion privilege, the Firemen have a profound interest in maintaining their seniority rights of promotion from firing service, whether these rights are exercised by demoted engineers or by firemen qualified for promotion. The claim of the Engineers, if supported by judicial authority, would have the effect of denying to the firemen's craft the exercise of a right to establish and maintain seniority in service, which is one of the most precious rights of the craft and which, so far as we are aware, has never hitherto been questioned.

It cannot be doubted that every craft of workers, whether engaged in railroad service or in industrial oc-

cupations, has a right to agree with an employer upon the establishment and maintenance of a seniority list with appropriate rights and opportunities of advancement. Seniority rights are well established and of long standing throughout the railroad industry. They are of very great value to firemen and to engineers. Article 42 of the Firemen's contract makes elaborate provision for the examination of firemen for promotion "according to seniority on the firemen's roster." (R. 599) This Article further provides (Sec. 3) that in case of failure or refusal to take an examination a fireman's seniority rights are reduced. Section 4 provides that, after passing the required examination, promotion and seniority will date "from first service as engineer on any class of locomotive."

Thus, seniority rights of a fireman to a job as an engineer are an essential part of the Firemen's contract; and a promotion from firing service must mean employment as an engineer or else the Firemen would be making a contract for the *un*employment of senior firemen—and a promotion would be the equivalent of a furlough from service; and would be a grave misfortune. It would be a snare and a delusion for the railroad to require firemen to qualify for promotion, and to agree to promote them in accordance with seniority, and then to permit the Engineers to exercise an arbitrary discretion to permit the employment of promoted firemen as engineers, if at all, only in the order established by the Engineers.

The reality of this situation is that when firemen are promoted to engineer service, they no doubt become subject to the Engineers' contract; but not until they *are employed* and *are engineers*. There is nothing in the Railway Labor Act *compelling* a railroad to make an agreement with the Engineers as to who shall be employed as an engineer. The Railroad, of course, can

make such an agreement, provided it is not in conflict with the needs of public service and not in conflict with a legal agreement with the Firemen. But since no one questions the right of the Firemen to agree with the Railroad as to the seniority of firemen and as to the requirements for promotion, it is certainly within the legitimate scope of the Firemen's agreement to provide for maintaining the seniority order in which promoted firemen who are eligible to engineer service shall be called to serve as engineers.

Therefore, when we deal with the problem of the promotion of demoted engineers, we find that the restoration of such engineers (who are engaged in firing service) to engineer service is a logical and essential part of the contract in behalf of firemen which provides for their seniority and promotion; and these provisions are applicable both to demoted engineers and to promoted firemen eligible for engineer service. We point out again that it is not within the function or authority of a court to determine what agreements the Firemen shall make with the Railroad, so long as the Firemen's contract covers a subject matter in which the Firemen have a legitimate interest.

III

The Circuit Court of Appeals erred in holding that there is a line of cleavage between the firemen's and engineers' crafts "at the point of imposing conditions of entry into the one craft or the other."

In the preceding argument, we have sought to demonstrate the artificial and unwarranted nature of the division of authority between these two crafts which is apparently laid down in the opinion of the Circuit Court of Appeals. The court followed its opinion by amending the decree of the District Court by adding

the following paragraph after Paragraph (b) (1) of the decree: (R. 827)

> "b. (2) The Questions and Answers of Article 37, Section 15, are under the Railway Labor Act valid only in so far as they relate to their rights of firemen as such under said section. They are invalid under said Act in so far as they relate to entry of a fireman into the craft of engineers."

The Questions and Answers referred to are set forth at the conclusion of our statement of the case, but seem to require a little explanation here.

Section 15 provides:

> "A fireman assigned to a regular run and, at the instance of the Company, called for other service, thus causing him to miss his regular run, will be paid for such other service not less than he would have earned had he been sent out in turn in the service to which assigned. This not to include overtime." (Exh. 2, R. 587)

The Engineers do not contend that this provision is invalid. It is clearly intended to protect the earnings of a fireman so that if he is called for an emergency service he will not earn less than he would if he had continued to serve his regular run.

The Engineers attacked only the "Questions and Answers" which followed and read:

> "Question: (a) If it becomes necessary to call a fireman for service as an emergency engineer, when the engineers' extra list is exhausted, who should be called?
>
> "(b) Should a senior demoted engineer holding assignment as fireman become available after man used under (a) returns to terminal or completes day's work, who should be used?
>
> "Answer: (a) The senior available qualified man in accordance with his seniority as engineer.
>
> "(b) The senior available man." (Exh. 2, R. 587)

The Questions and Answers were designed, according to the testimony of a railroad witness (R. 169-172) to protect the Firemen from any evasion of the guaranteed payment.

The Southern Pacific attorney, Mr. Mason, asked the following questions which were answered by the railroad witness, Mr. Buckley, an official of the Southern Pacific who had formerly been, first, local chairman for the Firemen and, later, local chairman for the Engineers, a witness obviously well qualified to testify impartially to the meaning and effect of the contractual provisions.

> "Q. (By Mr. Mason) If it were not for the provision in heavy type, the questions and answers in heavy type, could the company slide by the senior available man and call some other demoted engineer serving as a fireman in an emergency?
>
> "A. Yes, they could then, but the question and answer appearing in heavy type prevents us from doing that.
>
> "Q. What does that provision do then?
>
> "A. This provision here requires us to call the senior demoted engineer.
>
> "Q. Even though he may be assigned to a run as a fireman?
>
> "A. Even though he may be assigned to a run as a fireman, and due to leave the city that evening. We are required to use him if he is the senior available qualified demoted engineer, and regardless of the fact that other qualified demoted engineers may be available in the terminal, we will say, on their lay-over day."
>
> * * * * *
>
> "Q. Does it afford any protection to the members of the firemen's craft?
>
> "A. Well, it preserves the integrity of Section 15 of their Article XXXVII, and it also preserves the integrity of their seniority rule, which advances

men of the higher grade of service in accordance with their service as engineers."

The foregoing testimony ought to be conclusive of the fact that the Questions and Answers are a valid part of the Firemen's contract without any qualification. To state that they are invalid "in so far as they relate to the entry of a fireman into the craft of engineers" apparently means that the Engineers can exercise some control over the execution of this provision of the Firemen's contract. Yet, as the railroad witness pointed out, the purpose and effect of these Questions and Answers is to protect the members of the firemen's craft, to preserve the integrity of Section 15, the validity of which is not in question, and to preserve the integrity of their seniority rule which the Firemen certainly have a right to preserve. It seems that the Circuit Court must have been led into this ambiguous but confusing amendment of the decree of the District Court by the illusion that the court had somehow discovered an absolute line of cleavage between the jurisdiction of the Firemen's Brotherhood and the Engineers' Brotherhood whereby Firemen could contract for promotion but could not contract to insure to their members the substance of promotion—that is, employment as engineers in accordance with their seniority. We submit that this emphasizes once more the unfortunate and illusory nature of the line of cleavage which the Circuit Court attempts to establish. We point out again that it was not within the authority of the court to limit the jurisdiction or powers of a railway labor organization in making a contract protecting the legitimate interests of the members of that craft.

QUESTIONS PROPOUNDED BY THIS COURT

In the order allowing certiorari in this and certain other cases, counsel were requested to discuss in their

briefs and on oral argument certain questions "so far as applicable in each case." The first and second questions propounded by the Court seem to be the only ones applicable to the Southern Pacific cases. We submit the following discussion of these questions:

Question 1: "Whether resort to the declaratory judgment procedure is appropriate in the circumstances."

In the Southern Pacific case, the Engineers' Committee brought a suit for a declaratory judgment to have declared invalid certain provisions of the contract between the B. L. F. & E. and the Railway involving the representation issue (involved in Supreme Court, No. 27) and the mileage regulation issue (involved in the present case, No. 41).

The Southern Pacific cases are clearly based on the Declaratory Judgment Act. The question as to whether they come under the Act (28 U.S.C.A., Par. 400) seems to involve either (1) whether this is a "case of actual controversy", or (2) whether administrative procedure provided in the Railway Labor Act affords a special statutory method for determining the issues, which would preclude resort to a declaratory judgment (see *Washington Terminal Company v. Boswell*, 124 F. (2d) 235; affirmed by equally-divided Supreme Court June 14, 1943).

(1) There is no doubt as to the existence of an actual controversy between the two labor organizations. The Engineers are claiming that the Firemen's contract infringes on statutory rights of the organization and its members. The right of representation in grievances and the right to regulate mileage both involve valuable rights to determine the earnings of employees both in the matter of regulating mileage and promotion and in the matter of adjusting grievances, which involve money payments as well as discipline. If the Firemen's

contract is valid, certain rights accrue to its members which are valuable to them and to the organization in a monetary sense. If the Engineers are being denied corresponding rights by virtue of the Firemen's contract, they have an equal monetary concern.

Whether the organizations as such have the right to protect *organization* interests, which involve the maintenance of their activities through maintenance of membership, is a more complicated question, particularly as they are voluntary associations not for profit. But it is clear that the committees in each case, although they may speak of organization rights, are prosecuting the rights of their members as individuals—rights which may grow out of membership, but which have a legal status in the rights conferred by statute in the Railway Labor Act, i. e.—the right of self-organization and the right of representation in collective bargaining by representatives of their own choosing, and the right to present grievances and to have them adjusted either by agreement or through action of the adjustment boards established in the Act.

It has been long recognized that individuals may bring suit against a railroad to enforce their contractual rights as established in collective agreements (*Moore v. I. C. R. R. Co.*, 312 U. S. 630), so it would seem that the validity of such collective agreements, being a matter underlying the determinative of the actual rights which may be the subject of suits at law, must be a subject matter as to which it is peculiarly appropriate to obtain a declaratory judgment settling questions of fundamental right that might be in issue in a multiplicity of suits.

> "When a federal statute condemns an act as unlawful, the extent and nature of the legal consequences of the condemnation, though left by the statute to judicial determination, are nevertheless federal questions, the answers to which are to be derived from the statute and the federal policy which it has adopted." (*Sola Electric Co. v. Jefferson Electric Co.*, 317 U. S. 173, 176)

With the foregoing general propositions in mind, neither the Firemen nor the Railroad involved in these cases questioned the propriety of a resort by the Engineers to a suit for declaratory judgment. It was to the advantage of the Railroad and the organizations to have a judicial decision of the issues presented.

Nevertheless, since the suits were brought by the Engineers, it is the primary obligation of the moving party to sustain the jurisdiction, so it seems that, upon the simple basis of a general statement, the defendants might well leave it to the complainants to accept the principal responsibility for establishing the right to sue for a declaratory judgment which they must have investigated and relied upon before bringing the suits.

(2) The question as to whether there is a statutory procedure provided in the Railway Labor Act which would preclude a suit for declaratory judgment may have been raised in the mind of the Supreme Court partly because of the Washington Terminal case. However, in that case, a declaratory judgment was sought by the railroad upon an issue which had been decided against the railroad in favor of the employees. The employees had failed to bring a suit to enforce the decision of the adjustment board and the question was as to whether, within the two years allowed for the employees to

bring suit, the railroad could bring a suit for declaratory judgment and thereby obtain the judicial ruling which might be obtained at a suit of the employees to enforce the award.

The present cases raise issues regarding the validity of contracts which cannot be submitted to the decision of an adjustment board. The function of an adjustment board is to determine disputes growing out of grievances or out of the interpretation or application of agreements, and the adjustment boards act upon the assumption of the validity of the agreement and the right of representation asserted. The boards are not judicial bodies passing upon questions of law, but fact-finding bodies composed of lay representatives of the unions. They are set up for the specific and limited purpose of passing upon issues of fact and handing down awards resulting from such findings of fact; and it is specifically provided in the Railway Labor Act, Sec. 1, Fifth: "Nor shall the jurisdiction or powers of such employee organizations be regarded as in any way limited or defined by the provisions of this Act or by orders of the Commission" (i. e., the Interstate Commerce Commission).

So it follows that so far as the Act establishes a right of representation, that right is based on the general provisions of the Act, with a limited duty upon the Mediation Board to conduct an election to determine who are the self-chosen representatives of the employees for purposes of collective bargaining. A careful study of the Railway Labor Act will not develop the existence of any machinery within the Act to determine the legal issues involved in the present cases.

It has been previously held in the Clerks' case (*T. & N.O.R.Co., v. Brotherhood, etc.*, 281 U.S. 548)

and in the Virginian Railway case (*Virginian Railway v. System Federation*, 300 U. S. 515) that there may be a resort to the equity jurisdiction of the federal courts to enforce the rights and obligations created by the Act. It would appear to follow that the jurisdiction of the federal courts to entertain a suit for a declaratory judgment could be properly invoked for the same purposes. It is also a fact that in the Southern Pacific case the controversy between the labor organizations over the right to represent their members was carried through the entire machinery of the Act; through consideration in conference and with the aid of the services of the Mediation Board and finally presented to a presidential Emergency Board, the findings of which, in favor of the Firemen's position, were accepted by the railroad and the Firemen. (R. 812-814; also Ex. A. R. 726)

The question may arise as to whether, after this Emergency Board action in the Southern Pacific case, the Engineers had a right to apply for a declaratory judgment. But, the essential effect of the proceedings under the Act, which culminated in the findings of an emergency board, was not to make a judicial decision but to advise the employees and the carrier of the views of a presidential Emergency Board as to the practical and just way to settle the controversy, and also of the opinion of impartial arbitrators as to the legal rights arising under the Railway Labor Act. But the Engineers may question whether, since legal rights are involved, they have not a further resort to a lawsuit to obtain a judicial decision.

It is possible that the representation issue (involved in No. 27) might be raised in the suit of an individual claiming to have been deprived of

his legal rights through a representation to which he did not agree. But, since the contract of the Firemen provided simply that an employee who was a member of the Firemen's Brotherhood had a right to be represented by his own organization, it would seem that no individual who had been so represented would have any question to raise. On the other hand, if the contention of the Engineers were correct, and members of the Firemen's Brotherhood were thereby forced to accept a representation not of their choosing, then a legal right might arise in a fireman to prosecute a proceeding through a representative of his own selection. In other words, if the Railroad had made a contract with the Engineers, requiring a non-member to accept their representation, a right might arise subject to judicial decision. It may be contended that in the present case the Engineers are seeking to enforce a right which clearly cannot exist; that is, the right to represent an individual in the prosecution of his property rights without his consent. This argument does not simply beg the question, because there must be a *substantial* issue to invoke the court's jurisdiction. The Firemen do not concede that the *representation* claim of the Engineers is substantial.

However, the mileage question *does* raise the issue as to whether the rights of engineers to earn money are being denied by a contract between the Firemen and the Railroad, which raises a justiciable issue. Against this argument, however, is the defense of the Firemen to the effect that engineers' earnings are limited only as a condition of the exercise of a privilege (demotion) which they concede is granted to them by the Firemen's organization and granted only subject to their

acceptance of limitations upon earnings. Nevertheless, the mere argument of the question serves to show that the jurisdiction of the court has been invoked upon the assertion of a right which, if being violated, would warrant judicial protection. When the court finds, as it did in these cases, that the right does not exist, it would seem appropriate to have that finding incorporated in a declaratory judgment.

As a parallel, it may be noted that a litigant has no right to have a statute adjudicated invalid which is valid; but if a litigant can raise a substantial question as to the validity of the statute, he is entitled to a judgment, and, if the statute is found valid, the defendant is entitled to a judgment to that effect.

Question 2: "Whether any questions of the construction of the contracts involved are governed by state or by federal law."

Without embarking on an extensive speculation, it seems that the simple answer to this question is that the questions of the construction of the contracts *which are involved in these suits* are governed by federal law. The rights of the employees to collective bargaining and the obligations imposed on carriers and employees all arise under the Railway Labor Act. It is true that a suit of an employee against a railroad to recover wages due him, or to prevent a violation of contractual obligations to him, might be brought in a state court and, in many instances the enforcement and construction of contract rights and obligations will be determined by state law. But the issues raised in the present cases all require the interpretation and application of the requirements of the Railway Labor Act. They in-

volve rights and duties established by this federal statute to protect interstate commerce. These are to be determined in accordance with the requirements of the Railway Labor Act. It would seem they must be governed by federal law.

To particularize, in the Southern Pacific cases, all the contentions of the Engineers as to representation of employees are based on rights alleged to arise under the Railway Labor Act, whereas the Firemen justify their position as based on the rights of employees affirmed in the Railway Labor Act, and as based on the fundamental constitutional right of a person not to be deprived of his property without due process of law, which certainly means a right to choose his own representative for the defense of his property rights.

The mileage provisions of the Firemen's contract are attacked by the Engineers on the basis of a claim that under the Railway Labor Act the duly designated representative of the Engineers' craft had an exclusive right to contract regarding terms and conditions of an engineer's employment. The Firemen base their defense on the statutory rights of the Firemen and their duly designated representative, under the Railway Labor Act. Here is involved not primarily any question of construing and enforcing a contract—but the question of construing and enforcing a federal law under which the complainant contends that the contract is invalid. This issue arises solely out of and should be determined solely in accordance with federal law. There is no serious dispute over what the contractual provisions mean; but primarily a question as to the extent to which the right to make the contract has been affirmed or denied by federal statute. (See *Sola Electric Co. v. Jefferson Electric Co.*, 317 U. S. 173, 176, quoted *supra*.)

CONCLUSION

We submit that the judgment of the Circuit Court of Appeals amending the decree of the District Court should be reversed and the judgment and decree of the District Court should be affirmed.

Respectfully submitted,

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